

9/12

UNITED STATES OF AMERICA  
UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

Edward Griffes

Petitioner,

-v-

Steve Rivard

Respondent.

HON. Mark A. Goldsmith

HON. R. Steven Whalen

Case No. 4:11-cv-14227-MAG-RSW

FILED  
MAR 27 2012  
CLERK'S OFFICE  
DETROIT

MOTION TO STAY PROCEEDINGS AND HOLD PETITION IN ABEYANCE

WITH BRIEF IN SUPPORT OF MOTION FOR STAY

Now comes Petitioner to request that this court hold his Petition for Writ of Habeas Corpus in Abeyance while he seeks exhaustion of the following issues at the state court level in accordance with 28 U.S.C. sec. 2254 (b), (c) O'Sullivan v. Boerckel, 526 U.S. 838, 844-45, 119 S. Ct. 1728, 1732 (1999). And in support states:

1. Petitioner Edward Griffes, filed his PETITION FOR WRIT OF HABEAS CORPUS in this court on or about 9/21/2011.
2. The Respondent was ordered to respond to the Petition and file a Answer with this Court by April 3, 2012.
3. At this point in time the State has not answered the original Petition, and therefor would not be prejudiced by the Court GRANTING this request.
4. Under the circumstances Appellate Counsel raised two (5) claims through the Michigan Court of Appeals and Michigan Supreme Court's.

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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
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Edward Griffes

Petitioner,

-v-

Steve Rivard

Respondent.

Civil Action No. 4:11-cv-14227-MAG-RSW

HON. Mark A. Goldsmith

UNITED STATES DISTRICT JUDGE

HON. R. Steven Whalen

UNITED STATES MAGISTRATE JUDGE

Edward Griffes #626025  
St. Louis Correctional Facility  
8585 N. Croswell Rd.  
St. Louis, MI 48880  
PETITIONER IN PRO PER

MOTION TO HOLD HABEAS PETITION IN ABEYANCE, NOW COMES Petitioner,  
in propria persona, and hereby moves this Honorable Court to Hold  
his Petition for Habeas Corpus in Abeyance, stating:

1. Respondent contends that Petitioner has not properly exhausted his  
third claim in the state courts or given the state appellate courts a fair  
opportunity to pass upon the issue *presented within the brief.*

*See* Respondent's Answer  
to Petition for Writ of Habeas Corpus, Statement Regarding Exhaustion of State  
Court Remedies, page 3.

2. Petitioner asks this Honorable Court to Hold his Petition for Writ of  
Habeas Corpus in Abeyance so that he may file a Motion for Relief From Judgement,  
pursuant to MCR 6.500, in order to properly exhaust his third claim and to  
satisfy the requirements of 28 USC §2254 (b).

3. Because I am a prisoner I am unable to seek concurrence in the relief  
sought under the Local Rules for the Eastern District of Michigan.

WHEREFORE, Petitioner respectfully requests this Court to hold this matter in abeyance until he can properly exhaust the third claim in the state court.

Respectfully submitted,

Edward Griffes 626025

Edward Griffes #626025  
in Pro Per  
St. Louis Correctional Facility  
8585 N. Croswell Rd.  
St. Louis, MI 48880

DATE: 3-21-12

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

EDWARD GRIFFES

Petitioner,

-v-

Steve Rivard

Respondent.

Civil Action No. 4:11-cv-14227-MAG-RSW

HON. Mark A. Goldsmith

\_\_\_\_\_  
Edward Griffes #626025  
St. Louis Correctional Facility  
8585 N. Croswell Rd.  
St. Louis, MI 48880  
Petitioner in Pro Per  
\_\_\_\_\_

**FILED**  
**MAR 27 2012**  
**CLERK'S OFFICE**  
**DETROIT**

PROOF OF SERVICE

On 3-23, 2012, I served a true copy of the pleadings listed below and proof of service upon the Assistant Attorney General, Habeas Corpus Division, P.O. Box 30217, Lansing MI 48909.

List of Pleadings:

Motion to Hold Habeas Petition In Abeyance  
Brief In Support Of Motion

by placing the same in a sealed envelope with postage fully prepaid thereon and pursuant to the MDOC expedited legal mail policy turning said pleadings over to the appropriate MDOC staff who, in turn, deposited it into the United States Mail.

I declare that the forgoing statements are true to the best of my information, knowledge, and belief.

Edward Griffes  
Edward Griffes #626025

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

FILED  
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DETROIT

Edward Griffes

Petitioner,

-v-

Steve Rivard

Respondent.

Civil Action No. 4:11-cv-14227-MAG-RSW

HON. Mark A. Goldsmith

UNITED STATES DISTRICT JUDGE

HON. R. Steven Whalen

UNITED STATES MAGISTRATE JUDGE

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Edward Griffes #626025  
St. Louis Correctional Facility  
8585 N. Croswell Rd.  
St. Louis, MI 48880  
PETITIONER IN PRO PER

---

BRIEF IN SUPPORT OF MOTION TO  
HOLD HABEAS PETITION IN ABEYANCE

ISSUES PRESENTED

Petitioner asks this Honorable Court to Hold his Petition for Writ of Habeas Corpus in Abeyance so that he may file a Motion for Relief From Judgment, pursuant to MCR 6.55, in order to properly exhaust his third claim and to satisfy the requirements of 28 USC §2254 (b).

- I. The prosecutor prejudged petitioner with improper argument.
- II. Defendant was denied a fair trial by the failure to empanel a separate jury.
- III. Defendant was denied effective assistance of trial counsel.
- IV. Defendant was unconstitutionally prejudiced by ineffective assistance or appellate counsel.
- V. *Defendant was denied the assistance of co counsel G.R. Pete Frye who wanted to help represent defendant pro bono. This denied defendant his Equal Protection clause under the 14<sup>th</sup> Amendment XIV U.S.C.A..*
- VI. *Unduly suggestive witness identification of defendant.*

AUTHORITY FOR THE RELIEF SOUGHT

A habeas petitioner may not resort to federal court without first giving the state courts a fair opportunity to address his claims and to correct any error of constitutional magnitude. 28 U.S.C. sec. 2254(b), (c); O'Sullivan v. Boerckel, 525 U.S. 838, 844-45, 119 S. Ct. 1732 (1999). To satisfy that requirement, he must present both the operative <sup>facts</sup> ~~fact~~ and the legal principles that control each claim to the state judiciary; otherwise, he will forfeit federal review of the claim. Rodriguez v. Scillia, 193 F.3d 913, 916 (7th Cir. 1999); Bocian v. Godinez, 101 F.3d 465, 469 (7th Cir. 1996).

ARUGUMENT

In order to satisfy the federal habeas exhaustion requirement, a state prisoner must present his claims to a state court of last resort in a petition for discretionary review when that review is part of the state's ordinary appellate review procedure. Although the Illinois Supreme Court's system of discretionary review discourages cases which do not involve questions of broad significance, a right to raise claims does exist. Petitioner's failure to timely present his claims to the Illinois Supreme Court resulted in procedural default. *O'Sullivan v Boerckel*, 526 US 838; 119 SCt 1728; 144 LEd2d 1 (1999).



RELIEF REQUESTED

Petitioner would ask that this Honorable Court grant this Motion to hold his petition in abeyance so that he may properly present his claim to the state courts.

Respectfully submitted by:

Edward Griffes 626025

Edward Griffes #626025  
St. Louis Correctional Facility  
8585 N. Croswell Rd.  
St. Louis, MI 48880

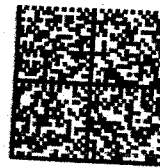
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Clerk of the Court

~~1104 Mark A. Goldsmith~~

~~1104 Mark A. Goldsmith~~

Theodore Levin United States Courthouse

231 Lafayette Blvd.

Detroit, Michigan 48226

